McMillan Cartage, Inc. *and* Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 33-CA-5305

July 23, 1981

DECISION AND ORDER

Upon a charge filed on February 24, 1981,[1] and a first amended charge filed on March 11 by Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Union, and duly served on McMillan Cartage, Inc., hereinafter called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 33, issued a complaint and notice of hearing on March 27 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On May 4, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on May 13, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that, unless an answer to the complaint was filed by Respondent within 10 days from the service thereof, "all of the allegations in said Complaint shall be deemed to be admitted true and may be so found by the Board."

To date, neither an answer to the complaint nor a response to the Notice To Show Cause has been filed by Respondent. No good cause to the contrary having been shown, the allegations of the complaint herein are deemed to be admitted and are found to be true by the Board. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Illinois corporation with its office and place of business located in Princeton, Illinois (herein called the Princeton facility), has been, at all times material herein, engaged in the business of intrastate hauling of freight and bulk materials. During the calendar year ending December 31, 1980, a representative period, Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 for other enterprises located within the State of Illinois which, during the same period of time, purchased and caused to be delivered directly to their respective facilities from outside of the State of Illinois goods and materials valued in excess of $50,000. Respondent, in the course and conduct of its business operations during the same period, purchased and received goods and materials valued in excess of $5,000 directly from suppliers located outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent has been, at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates herein are during 1981 unless otherwise indicated.

III. THE UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representational Status*

The following employees of Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All truckdrivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such other employees who are engaged in local pick-up, delivery, and assembling of freight, but excluding all supervisors, guards and professional employees as defined in the Act.

Since 1970, and at all times material herein, the Union has been the recognized and exclusive collective-bargaining representative of the employees in said unit. The Union and Respondent have been parties to successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from April 1, 1979, through March 31, 1982.

B. *The Refusals To Bargain*

On or about December 31, 1980, Respondent closed its Princeton facility and laid off all its employees. Respondent has not reopened its facility or rehired its laid-off employees. By letter dated January 7, the Union requested that Respondent bargain over the effects upon its employees of such closing and renewed its request in another letter on February 24. Both letters also requested Respondent to furnish information regarding possible plans Respondent had for its business or possible purchasers of its business, which information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit.

Since on or about January 8, Respondent has failed and refused to bargain with the Union as the exclusive representative of the employees in the unit concerning the effects upon the employees of its decision to close its Princeton facility, and Respondent has failed and refused to comply with the Union's request for information regarding possible plans Respondent had for its business or possible purchasers of its business.

Accordingly, we find that, by failing and refusing to bargain with the Union regarding the effects upon its employees of its decision to close its Princeton facility and by failing and refusing to provide the Union with information necessary and relevant to it as the exclusive collective-bargaining representative of the unit employees, Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

As a result of Respondent's unlawful failure to bargain with the Union over the effects on bargaining unit employees of its decision to close its Princeton facility, the laid-off employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require Respondent to bargain with the Union concerning the effects of the closing of its operations on its employees, and shall include in our Order a limited backpay requirement[2] designed both to make whole the employees for losses suffered as a result of the violation and to recreate, in some practicable manner, a situation in which the parties' bargaining is not entirely devoid of economic consequences for Respondent. We shall do so in this case by requiring Respondent to pay backpay to its employees in a manner similar to that required in *Transmarine Navigation Corporation*.[3] Thus, Respondent

[2] We have indicated that backpay orders are appropriate means of remedying 8(a)(5) violations of the type involved herein, even where such violations are unaccompanied by a discriminatory shutdown of operations. Cf. *Royal Plating and Polishing Co., Inc.*, 148 NLRB 545 (1964), and cases cited therein.

[3] *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968), 380 F.2d 933 (9th Cir. 1967), remanding 152 NLRB 998 (1965).

shall pay employees backpay at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum to any of these employees exceed the amount he or she would have earned as wages from December 31, 1980, the date on which Respondent terminated its operations, to the time he or she secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ.[4] Interest on all such sums shall be paid in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). (See *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)

To further effectuate the policies of the Act, Respondent shall be required to establish a preferential hiring list of all laid-off unit employees following the system of seniority provided for in the collective-bargaining agreement and, if Respondent ever resumes operations anywhere in the Princeton, Illinois, area, it shall be required to offer these employees reinstatement. If, however, Respondent were to resume its Princeton operation, Respondent shall be required to offer unit employees reinstatement to their former or substantially equivalent positions.[5]

Furthermore, in view of the fact that Respondent is no longer in operation and its former employees may be in different locations, we shall order Respondent to mail the Union and each of its employees employed on the date it ceased operations copies of the attached notice signed by Respondent.

Finally, we shall require Respondent to provide the Union with information regarding possible plans Respondent had for its business or possible purchasers of its business.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

[4] *Transmarine Navigation Corporation, supra.*

[5] *Drapery Manufacturing Co., Inc., and American White Goods Company*, 170 NLRB 1706 (1968).

CONCLUSIONS OF LAW

1. McMillan Cartage, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All truckdrivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such other employees who are engaged in local pick-up, delivery, and assembling of freight, but excluding all supervisors, guards, and professional employees as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By failing and refusing to bargain with the Union about the effects on its employees of its decision to close its Princeton facility, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By failing and refusing to furnish the Union with information regarding possible plans Respondent had for its business or possible purchasers of its business, which information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit, Respondent has violated Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, McMillan Cartage, Inc., Princeton, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of its employees in the appropriate unit set forth below regarding the effects of its decision to close its Princeton facility. The appropriate unit is:

> All truckdrivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such other employees who are engaged in local pick-up, delivery, and assembling of freight, but excluding all supervisors, guards and professional employees as defined in the Act.

(b) Failing and refusing to furnish the Union with information regarding possible plans Respond-

ent had for its business or possible purchasers of its business, which information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of Respondent's employees.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the excercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is designed to effectuate the policies of the Act:

(a) Make whole the employees in the appropriate unit who were laid off on or about December 31, 1980, for any loss of pay or benefits suffered as a result of the unilateral closing of Respondent's business in the manner and for the period set forth in the section of this Decision and Order entitled "The Remedy."

(b) Upon request, bargain collectively with the Union as the exclusive bargaining representative of all employees in the above-described appropriate unit regarding the effects upon the employees of the decision to close its Princeton facility and, if an understanding is reached, embody it in a signed agreement.

(c) Establish a preferential hiring list of all employees in the appropriate unit who were laid off on December 31, 1980, following the system of seniority provided for under the collective-bargaining agreement with the Union, and, if operations are ever resumed in the Princeton, Illinois, area, offer reinstatement to those employees. If, however, Respondent resumes operations at the Princeton facility, it shall offer all those in the appropriate unit reinstatement to their former or substantially equivalent positions.

(d) Furnish the Union with information regarding plans Respondent had for its business or possible purchasers of its business, which information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Mail a copy of the attached notice marked "Appendix"[6] to Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and to all employees who were employed by Respondent immediately prior to Respondent's cessation of operations on December 31, 1980. Copies of said notice, on forms provided by the Regional Director for Region 33, after being duly signed by Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as hereinabove directed.

(g) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain with Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, concerning the effects upon employees in the unit described hereinbelow of our decision to close our Princeton facility on December 31, 1980.

WE WILL NOT fail and refuse to furnish to the Union information regarding possible plans for the business or possible purchasers of the business, which information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act, as amended.

WE WILL, upon request, bargain collectively with Local Union No. 722, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below, with respect to the effects upon unit employees of our decision to close our business, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL furnish the Union with information regarding possible plans for the business or possible purchasers of the business, which information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL establish a preferential hiring list of all employees in the appropriate unit who were laid off on December 31, 1980, following the system of seniority provided for under the collective-bargaining agreement with the Union, and, if operations are ever resumed in the Princeton, Illinois, area, WE WILL offer reinstatement to those employees. If, however, we resume operations at the Princeton facility, WE WILL offer all those in the appropriate unit reinstatement to their former or substantially equivalent positions.

WE WILL make whole our employees in the appropriate unit by paying those employees who were laid off on December 31, 1980, when we closed our business, normal wages for a period specified by the National Labor Relations Board, plus interest. The bargaining unit is:

> All truckdrivers, helpers, dockmen, warehousemen, checkers, power-lift operators hostlers, and such other employees who are engaged in local pick-up, delivery, and assembling of freight, but excluding all supervisors, guards and professional employees as defined in the Act.

MCMILLAN CARTAGE, INC.